

A. 27

1 HIGHLY CONFIDENTIAL - JOHN VARLEY
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -

5 In Re:

Chapter 11

6

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC. et al., (Jointly Administered)

8

9 Debtors.

10 - - - - -

11 HIGHLY CONFIDENTIAL
12 DEPOSITION OF JOHN VARLEY
13 Thursday, September 3, 2009
14 At: 12:00 pm
15 Taken at:
16 Barclays
17 1 Churchill Place
London
United Kingdom

18

19 Reported by: AILSA WILLIAMS
Certified LiveNote Reporter

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1 HIGHLY CONFIDENTIAL - JOHN VARLEY 2	1 HIGHLY CONFIDENTIAL - JOHN VARLEY 3
2 A P P E A R A N C E S	2
3 JONES DAY, LLP	3 I N D E X
4 Attorneys for Lehman Brothers, Inc.	4 JOHN VARLEY 4
5 222 East 41st Street	5 DIRECT EXAMINATION BY MR. TAMBE: 4
6 New York, NY 10017-6702	6 CROSS-EXAMINATION BY MR. WOOD: 90
7 BY: JAYANT W. TAMBE, ESQ	7 CROSS-EXAMINATION BY MR. BUNTING: 92
8 BRIDGET CRAWFORD, ESQ	8 REDIRECT EXAMINATION BY MR. 112
9	9 TAMBE:
10 BOIES, SCHILLER & FLEXNER, LLP	10 FURTHER CROSS-EXAMINATION BY MR. 114
11 Attorneys for Barclays Capital and the	11 WOOD:
12 Witness	11 FURTHER CROSS-EXAMINATION BY MR. 117
13 5301 Wisconsin Avenue N.W	12 BUNTING:
14 Washington D.C 20015	13 I N D E X O F E X H I B I T S
15 BY: JONATHAN M. SHAW	14 Exhibit 337A Powerpoint Presentation 19
16 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES,	15 Exhibit 338A E-mail, Rosen to Varley 37
17 LLP	16 Exhibit 339A Message from J. Varley 39
18 Attorneys for the Creditors Committee	17 Exhibit 340A E-mail, Merson to Varley 40
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24 Attorneys for the SIPA Trustee	23 Exhibit 346A E-mail, Varley to Diamond 95
25 1775 I Street, N.W	24 Exhibit 347A E-mail, Le Blanc to Varley 96
Also Present:	25 Exhibit 348A E-mail, M. Smith to various 97
PHILIP E. KRUSE Alvarez & Marsal	
GREG BARDEN, Jones Day	
DEBORAH COOPER, Barclays	
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1 HIGHLY CONFIDENTIAL - JOHN VARLEY 4	1 HIGHLY CONFIDENTIAL - JOHN VARLEY 5
2 JOHN VARLEY	2 MR. TAMBE: We understand we have some
3 Having been duly sworn,	3 time constraints here. I think we have a total of
4 Testified as follows:	4 3 hours of your time and while reserving all of
5 DIRECT EXAMINATION BY MR. TAMBE:	5 our rights we want to make the best use of that
6 MR. TAMBE. Good afternoon, Mr. Varley.	6 time.
7 My name is Jay Tambe with the law firm of Jones	7 What I would like to pose to you this
8 Day, special counsel to Lehman Brothers Holdings	8 afternoon are a series of questions about the
9 Inc With me is my colleague, Bridget Crawford	9 Barclays/Lehman transaction and get your best
10 I will let the other attorneys and folks	10 recollection and show you some documents and
11 down the table introduce themselves to you on the	11 discuss some documents with you. Is that fair?
12 record and then we will get started.	12 A. It is.
13 MR. WOOD: John Wood, from the law firm	13
14 Hughes, Hubbard & Reed, and we represent the	14
15 SIPA Trustee.	15
16 MR. BUNTING: Matthew Bunting from	16
17 Quinn, Emanuel, Urquhart, Oliver & Hedges	17
18 representing Creditors Committee.	18
19 MR. KRUSE: Phil Kruse with Alvarez &	19
20 Marsal on behalf of the LBHI estate.	20
21 MR. SHAW: Jonathan Shaw, Boies,	21
22 Schiller & Flexner, on behalf of Barclays and	22
23 Mr. Varley.	23
24 MS COOPER: Deborah Cooper, Head of	24
25 Group Litigation, Barclays	25

REDACTED

Page 6		Page 7	
1	6	1	7
2		2	HIGHLY CONFIDENTIAL - JOHN VARLEY
3		3	question within the context of the operating
4		4	protocols here. I said to you a moment ago that
5		5	as Chief Executive Officer I am answerable to the
6		6	board for the implementation of strategy. We
7		7	employ 140-odd thousand people in Barclays. We do
8	REDACTED	8	business in 50 countries or so, and the breadth of
9		9	that business requires delegation of operational
10		10	activity.
11		11	So Bob Diamond, as head of the
12		12	investment banking and investment management
13		13	business, has operational responsibility for the
14		14	running of those businesses within a strategic
15		15	framework that I impose on that business and the
16		16	other businesses. That operating protocol would
17		17	apply to this particular transaction.
18	Q. Going back to last year and the	18	So that I had responsibility for taking
19	Lehman/Barclays transaction, in broad strokes if	19	the strategy of the acquisition of the Lehman
20	you can describe for me what was the role that you	20	North American businesses to the board, discussing
21	played, what was your individual involvement in	21	that with the board, receiving their authority to
22	considering that deal, negotiating that deal,	22	implement, and I then delegated, subject to the
23	taking that deal through the board, whatever other	23	strategic framework that we had set for the
24	steps you may have taken?	24	transaction, I then delegated responsibility for
25	A. Perhaps it would help if I answer the	25	the negotiation and the execution of the
			transaction to Bob Diamond
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Page 36		Page 37	
1	36	1	HIGHLY CONFIDENTIAL - JOHN VARLEY 37
2		2	the need to have a substantial discount.
3		3	
4	REDACTED	4	
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8	Q. Once you are into Lehman two and you	8	
9	have announced to the world that the outlines of	9	
10	Lehman two, you have now got a number, you have	10	
11	got this 4 billion-dollar delta, is that	11	
12	4 billion-dollar delta then the target as the deal	12	
13	changes from Lehman two to Lehman three? I would	13	REDACTED
14	expect it to be --	14	
15	A. I am just thinking carefully about how	15	
16	I thought about it at the time. How I thought	16	
17	about it at the time was that we had to protect	17	
18	a margin to ensure that as the valuations in the	18	
19	balance sheet were realized, and you should know	19	
20	that they have not yet fully been realized, in	20	
21	other words our expectation was that the risk	21	
22	period would be very protracted, we needed to	22	
23	ensure that we had an appropriate margin. I don't	23	
24	know whether "target" is quite the right way of	24	
25	describing it, but I was certainly very fixated on	25	

PAGES 38-41 REDACTED

Page 42	Page 43
<p>1 42</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 REDACTED</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Q. Do you have an understanding as to what</p> <p>15 that is a reference to, "negative goodwill"?</p> <p>16 A. Yes, it is a technical term which is</p> <p>17 applied within the international financial</p> <p>18 reporting standards by which our accounting is</p> <p>19 governed. Let me try to explain it If you</p> <p>20 acquire for a purchase consideration of 10 assets</p> <p>21 or a business that has a net asset value of five,</p> <p>22 then you would create goodwill of five, and</p> <p>23 goodwill is subject to an impairment test, it is</p> <p>24 carried in the balance sheet and subject to an</p> <p>25 impairment test.</p>	<p>1 HIGHLY CONFIDENTIAL - JOHN VARLEY 43</p> <p>2 If on the other hand you acquire assets</p> <p>3 of 10 for a valuation of five, then there would be</p> <p>4 negative goodwill of five because of the discount</p> <p>5 at which you are buying the assets. So negative</p> <p>6 goodwill is a term of science describing in</p> <p>7 a scientific way what most people would refer to</p> <p>8 as a discount.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 REDACTED</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 44</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 REDACTED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 45</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 REDACTED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 46</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 REDACTED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 47</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 REDACTED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 48	Page 49
<p>1 48</p> <p>2 REDACTED</p> <p>3</p> <p>4</p> <p>5 Q. Sir, I have placed before you a document</p> <p>6 marked Exhibit 342A. It is a cover e-mail with</p> <p>7 a Powerpoint attachment. If you could take</p> <p>8 a moment to review that, let me know when you are</p> <p>9 done, and I will ask you some questions.</p> <p>10 A. Thank you</p> <p>11 Q. Although you are not shown as</p> <p>12 a recipient of the cover e-mail, do you recognize</p> <p>13 the attachment as materials used at the board</p> <p>14 meeting on 16 September?</p> <p>15 MR. SHAW: Is there any indication this</p> <p>16 is the final version?</p> <p>17 MR. TAMBE: No, this is all we got from</p> <p>18 you.</p> <p>19 A. I don't recollect.</p> <p>20 MR. TAMBE : If there is a final</p> <p>21 version, if you could produce it, that would be</p> <p>22 great.</p> <p>23 MR. SHAW: I don't know that it is not.</p> <p>24 MR. TAMBE : But there was</p> <p>25 a presentation made to the board?</p>	<p>1 49</p> <p>2 HIGHLY CONFIDENTIAL - JOHN VARLEY</p> <p>3 A As I recall, there was a presentation</p> <p>4 made to the -- I think we had a telephone meeting</p> <p>5 with the board on the Tuesday.</p> <p>6 Q. Would you have participated in that by</p> <p>7 phone or were there some people who gathered in</p> <p>8 person?</p> <p>9 A. I expect I would have participated</p> <p>10 physically, in this room.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 REDACTED</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 50</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 REDACTED</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Q. On page 2 of the attachment there is</p> <p>16 a summary, an executive summary of the</p> <p>17 transaction. If you look at the first set of</p> <p>18 arrows, the first one begins: "We intended to seek</p> <p>19 permission ..." I want to focus on those four</p> <p>20 arrows there. The second arrow refers to an</p> <p>21 acquisition of 75 billion of assets and</p> <p>22 liabilities. Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. This arrow does not separate out the</p> <p>25 \$75 billion of assets versus the \$71 billion of</p>	<p>1 HIGHLY CONFIDENTIAL - JOHN VARLEY 51</p> <p>2 liabilities. Is there any reason why not?</p> <p>3 MR. SHAW. Objection, foundation.</p> <p>4 A. I don't know.</p> <p>5 Q. Because your understanding was you were</p> <p>6 not acquiring 75 billion of assets and</p> <p>7 liabilities, correct?</p> <p>8 A. I draw your attention to the third</p> <p>9 arrow, where there is a statement: "The</p> <p>10 recognition of negative goodwill amounts to</p> <p>11 \$3 billion pretax".</p> <p>12 Q. That would be my next question. The</p> <p>13 numbers we had looked at on the earlier Exhibit,</p> <p>14 75 billion versus 71 billion, my question is where</p> <p>15 does that 3 billion-dollar negative goodwill</p> <p>16 amount come from?</p> <p>17 A. You are assuming a level of precision in</p> <p>18 a market that is moving with volatility that is</p> <p>19 unprecedented by anything that has been seen in</p> <p>20 the last hundred years, and I wish it were</p> <p>21 possible to be absolutely precise in answering</p> <p>22 questions of that sort. Even at the time, even</p> <p>23 with the benefit of contemporary recall I would</p> <p>24 not have been able to answer such a question.</p> <p>25 Q. Did the board impose any restrictions on</p>
Page 52	Page 53
<p>1 HIGHLY CONFIDENTIAL - JOHN VARLEY 52</p> <p>2 their grant of authority or did they give the</p> <p>3 execution team carte blanche to do this</p> <p>4 transaction, even if in this extremely volatile</p> <p>5 period the metrics changed completely?</p> <p>6 A. The way that we organize such matters,</p> <p>7 because as your question assumes you cannot have</p> <p>8 the board making realtime decisions about</p> <p>9 a transaction of this complexity, is that</p> <p>10 authority would be delegated to the Executive</p> <p>11 Committee to execute a transaction that is broadly</p> <p>12 consistent with what has been approved by the</p> <p>13 board.</p> <p>14 Q. So, for example, if you had said to the</p> <p>15 board you expected \$3 billion of pretax</p> <p>16 goodwill --</p> <p>17 MR. SHAW: Negative goodwill you mean?</p> <p>18 A. Yes.</p> <p>19 Q. That is something you would strive to</p> <p>20 achieve even if the particular specifics of the</p> <p>21 deal were changing and evolving because of market</p> <p>22 conditions?</p> <p>23 A. It is, but I would form and the</p> <p>24 Executive Committee would form a judgment about</p> <p>25 whether there was a change in the deal parameters</p>	<p>1 HIGHLY CONFIDENTIAL - JOHN VARLEY 53</p> <p>2 that caused us to go back to the board.</p> <p>3 Q. And as the deal evolved from Lehman two</p> <p>4 to Lehman three, you did not go back to the board</p> <p>5 for any additional authority, is that correct?</p> <p>6 A. That is my recollection, that we did</p> <p>7 not.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 REDACTED</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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9		9	Q. The numbers that appear there, the
10		10	\$72 billion and the \$68 billion, those are numbers
11		11	that reflect Barclays' view of what the
12	REDACTED	12	appropriate values were for those assets?
13		13	A. Yes.
14		14	Q. So these are not the Lehman values that
15		15	you are talking about, these are the Barclays
16		16	values?
17		17	A. I mentioned earlier that we were seeking
18		18	to ensure that we were appropriately contemporary
19		19	in our valuations and that we had created an
20		20	appropriate delta between asset and liability
21		21	values, and what you have put to me would be
22		22	consistent with that.
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12		12	REDACTED
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15	Q. Given everything that was going on in	15	
16	the market and volatility in the market, why did	16	
17	you absolutely expect to preserve that buffer?	17	
18	How could you?	18	
19	A. The expectation is to preserve it in the	19	
20	transaction.	20	
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12	REDACTED	12	REDACTED
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Page 120		Page 121	
1	HIGHLY CONFIDENTIAL - JOHN VARLEY 120	1	HIGHLY CONFIDENTIAL - JOHN VARLEY 121
2		2	CERTIFICATE OF COURT REPORTER
3	CERTIFICATE OF DEPONENT	3	
4		4	I, AILSA WILLIAMS, an Accredited LiveNote Reporter
5	I, John Varley, hereby certify that I have read	5	with European Deposition Services, London,
6	the foregoing pages, numbered 1 through 122, of my	6	England, hereby certify that the testimony of the
7	deposition of testimony taken in these proceedings	7	witness John Varley in the foregoing transcript,
8	on 3 September, 2009, and, with the exception of	8	numbered pages 1 through 122, taken on 3
9	the changes listed on the next page and/or	9	September, 2009 was recorded by me in machine
10	corrections, if any, find them to be a true and	10	shorthand and was thereafter transcribed by me;
11	accurate transcription thereof.	11	and that the foregoing transcript is a true and
12		12	accurate verbatim record of the said testimony
13	Signed:	13	
14	Name: John Varley	14	I further certify that I am not a relative,
15	Date:	15	employee, counsel or financially involved with any
16		16	of the parties to the within cause, nor am I an
17		17	employee or relative of any counsel for the
18		18	parties, nor am I in any way interested in the
19		19	outcome of the within cause.
20		20	
21		21	Signed:
22		22	AILSA WILLIAMS
23		23	Dated: 9/3/2009
24		24	
25		25	

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2
3 E R R A T A
4 Deposition of John Varley
5 Page/Line No. Description Reason for
6 change
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23 Signed:
24 Name John Varley
25 Date: